murrer, but issue is taken thereto, does not require the court to instruct thereon.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 587-595; Dec. Dig. § 251.* 7 Va-W. Va. Enc. Dig. 723.]

Appeal from Circuit Court, Orange County.

Action by Lelia M. McComb against W. G. Newman. Judgment for plaintiff, and defendant appeals. Affirmed.

F. C. Moon, Rixey & Hiden, and *Jno. G. Williams,* for appellant.

Grimsley & Miller, for appellee.

BAKER et al. *v.* BERRY HILL MINERAL SPRINGS CO.

June 8, 1911.

[71 S. E. 626.]

1. Principal and Agent (§ 181*)—Notice to Agent—Constructive Notice.—The rule that knowledge of the agent is knowledge of the principal does not apply where the agent, in order to commit a fraud upon a third person, perpetrates a fraud upon the principal.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. § 690; Dec. Dig. § 181.* 1 Va.-W. Va. Enc. Dig. 276; 3 Va.-W. Va. Enc. Dig. 568.]

2. Banks and Banking (§ 112*)—Acts of Officers—Fraud.—Where the president of a bank, in seeking to defraud certain persons, told them that the bank would accept their notes, would renew them indefinitely, and under certain circumstances would not enforce payment, the bank is not charged with the knowledge of the president, and therefore, being innocent, may enforce the notes.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 271, 272; Dec. Dig. § 112.* 2 Va.-W. Va. Enc. Dig. 299; 3 Va.-W. Va. Enc. Dig. 568.]

3. Banks and Banking (§ 114*)—Authority of Agent—Ratification.—Where the president, seeking to defraud third persons, told them that they could give the bank their note, and such note would not be enforced, and the bank, without knowledge of such promise, discounted the note, giving full value, there was no ratification of the president's acts.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 277-280; Dec. Dig. § 114.* 2 Va.-W. Va. Enc. Dig. 302.]

4. Injunction (§ 26*)—Grounds—Restraining Enforcement of Notes.—The president of a bank, in furthering certain fraudulent schemes of his own, told third persons that the bank would discount their notes secured by certain stock of a corporation which he was

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

organizing, and that if he could not sell the stock taken by these persons the bank would not enforce payment. The bank as an ordinary commercial transaction discounted the notes, and the stock was given as collateral. It proved worthless, and the bank offered to return it, and demanded payment of the notes. Held, that an injunction to restrain collection of the notes until there was an end to the litigation between the makers and the president of the bank was properly refused, where all parties to the transaction are not put in statu quo, and where the makers of the notes may not be entitled to relief against the bank, even if they succeed against the president.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. §§ 24-49, 54-61; Dec. Dig. § 26.* 7 Va.-W. Va. Enc. Dig. 521, 592.]

5. Appeal and Error (§ 1194*)—Remand—Subsequent Proceedings.—Complainants in a suit seeking an injunction first filed an original, then an amended, and last a supplemental, bill. The defendants demurred, and a decree sustaining the demurrer was reversed and remanded on appeal, leaving an injunction in force. Upon motion in the trial court to dissolve the injunction, complainants claimed that the motion was heard as on demurrer, because the defendant had not answered the supplemental bill and that the decree on appeal was conclusive on defendants. The defendant had answered the original and the amended bill, and before its motion to dissolve was heard had, over complainants' objection, filed an answer to the supplemental bill. The supplemental bill alleged nothing new, and the answer already in the record put in issue all the matters set up in any of the bills. Held that, under those circumstances, the motion was not heard as on demurrer, and that the decree on appeal did not conclude defendants.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1194.* 1 Va.-W. Va. Enc. Dig. 647, 652.]

Note. See this case on former appeal, 109 Va. 776, 65 S. E. 656.

Appeal from Circuit Court, Culpeper County.

Suit by K. M. Baker and others against the Berry Hill Mineral Springs Company of Virginia. From a decree dismissing an injunction, complainants appeal. Affirmed.

Rixey & Hiden, John S. Barbour, and *E. Hilton Jackson,* for appellants.

Grimsley & Miller and *Waite & Perry,* for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.